Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Decision adopted by the Committee under article 22 of the Convention, concerning communication No. 710/2015*, **

Submitted by:	Aref Mohammed Abdulkarim (represented by counsel, Mr. Tarig Hassan)
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	3 November 2015 (initial submission)
Date of present decision:	6 November 2017
Subject matter:	Deportation to the Sudan
Procedural issues:	Non-exhaustion of domestic remedies
Substantive issues:	Non-refoulement
Articles of the Convention:	3, 22

1.1 The complainant is Mr. Aref Mohammed Abdulkarim, a Sudanese national born on 6 July 1980. He applied for asylum in Switzerland and his application was rejected. He claims that his deportation to the Sudan by Switzerland would lead to a violation of article 3 of the Convention. The complainant is represented by counsel, Mr. Tarig Hassan.

1.2 On 4 November 2015, pursuant to rule 114 of its rules of procedure, the Committee requested the State party not to deport the complainant to the Sudan while his complaint was being considered. On 9 November 2015, the State party informed the Committee that, in accordance with its established procedure, the Federal Office for Migration had requested the competent authority not to take any steps to deport the complainant. He was thus assured that he could stay in Switzerland while his communication was being considered by the Committee and that the suspensive effect would not be removed.

1.3 On 16 February 2016, at the request of the State party, the Committee, acting through its Rapporteur on new complaints and interim measures, decided to examine the admissibility of the communication separately from the merits.

The facts as submitted by the complainant

2.1 The complainant lived in Khartoum and studied at the Sudanese University of Science and Technology from 2005 to 2007. During his studies, he became a member of the

* Adopted by the Committee at its sixty-second session (6 November–6 December 2017).

** The following members of the Committee participated in the examination of the present communication: Essadia Belmir, Alessio Bruni, Felice Gaer, Abdelwahab Hani, Claude Heller Rouassant, Jens Modvig, Ana Racu, Sébastien Touzé and Kening Zhang.

Justice and Equality Movement-Sudan (JEM). On 20 June 2005, the complainant was arrested after having given a speech on human rights violations committed by the Sudanese Government. He was detained, interrogated and tortured for three days. After his release, he continued to organize meetings, give speeches and collect money for JEM.

2.2 In 2008, the complainant was arrested at his home and detained by the Sudanese authorities for three weeks. While in detention, the complainant was told that he would be killed unless he ceased his political activities. Following his release, he was required to report to an office of the security services every Saturday. The complainant alleges that the authorities offered him money in exchange for information on JEM. When he refused to cooperate, he received further death threats. The complainant left the Sudan at the beginning of 2010 and entered Switzerland illegally on 25 July 2010.

2.3 The complainant continued his political activities for JEM in Switzerland, participating in conferences, protests and meetings of the organization. He took part in a conference of the Sudanese Revolutionary Front in Zurich, in Sudanese opposition meetings, in a meeting organized by Geneva Call at the United Nations Office at Geneva and in a meeting organized by the Centre for Humanitarian Dialogue, which took place on the premises of local radio station, LoRa. He also published several statements on Facebook strongly criticizing the Sudanese Government. He was appointed personal secretary of the President of JEM, Switzerland, on account of his activism.

2.4 The complainant alleges that, as a supporter of JEM and an active member of its Swiss affiliate, he has a well-founded fear of being arrested and subjected to torture and other inhuman and degrading treatment if he were to return to the Sudan.

2.5 The complainant argues that he has exhausted all domestic remedies available to him, as, on 22 September 2015, the Federal Administrative Court dismissed his appeal against the rejection of his third application for asylum. The Court is the final national authority for asylum appeals.

The complaint

3.1 The complainant argues that his deportation to the Sudan would constitute a violation of article 3 of the Convention by the State party. He maintains that, if he were deported to the Sudan, he would risk being subjected to torture or inhuman and degrading treatment. He argues that he risks being subjected to torture on account of his membership of JEM and his political activities in the Sudan and in Switzerland.

3.2 The complainant refers to the reports of Human Rights Watch[1] and Amnesty International[2] on the way in which the Sudanese Government treats the members and presumed supporters of JEM, which includes the use of arbitrary arrest and torture.

Submissions from the State party

4.1 On 17 December 2015, the State party submitted observations on the admissibility of the communication.

4.2 The State party notes that the complainant submitted an application for asylum on 26 July 2010. After having heard the complainant on two occasions, the former Federal Office for Migration, which is now known as the State Secretariat for Migration, dismissed the application out of hand, considering the complainant's allegations to be unfounded (Federal Office for Migration decision of 13 September 2010). In a decision taken on 27 September 2010, the Federal Administrative Court rejected the appeal lodged by the complainant against that decision.

4.3 On 30 July 2014, the complainant submitted a second application for asylum to the Federal Office for Migration. After a hearing on 26 September 2014, the State Secretariat for Migration rejected his second application for asylum on 15 January 2015. It described

[1] Human Rights Watch, Country Summary Sudan, January 2010, available at: http://www.hrw.org/sites/default/files/related_material/sudan_0.pdf.

[2] Amnesty International, Darfur crisis reaches Sudanese capital, 23 May 2008, available at: http://www.amnesty.org/en/news-and-updates/darfur-crisis-reaches-sudanese-capital-20080523.

his account as improbable and pointed out that his statements were contradictory and that the contradictions in question related to important elements of his allegations. Furthermore, the political activities reportedly carried out by the complainant in Switzerland were not such as to draw the attention of the Sudanese authorities.

4.4 On 16 February 2015, the complainant lodged an appeal with the Federal Administrative Court against the decision of the State Secretariat for Migration. The presiding judge (a single judge) handed down a ruling on 19 February 2015 rejecting his request for legal assistance, considering the appeal lodged by the complainant to have no chance of success, and invited the complainant to pay 1,200 Swiss Francs in advance to cover procedural fees, failing which his appeal would be declared inadmissible. As the complainant did not make the advance payment by the prescribed deadline, the Court declared the appeal inadmissible in a ruling handed down on 12 March 2015. Therefore, the complainant's allegation that the Federal Administrative Court rejected his appeal does not reflect reality.

4.5 On 16 July 2015, the complainant submitted a third application for asylum to the Federal Office for Migration. In a decision taken on 11 August 2015, the State Secretariat for Migration informed the complainant that his application for asylum constituted a multiple application in the sense of article 111 (d) of the Asylum Act of 26 June 1998. Considering the requirements set out in article 111 (d) (3) of the Asylum Act not to have been met, it invited the complainant to pay 600 Swiss francs in advance, failing which his application would be declared inadmissible (decision of 11 August 2015). As the complainant did not make the advance payment by the prescribed deadline, the State Secretariat for Migration dismissed his third application for asylum out of hand (decision of 3 September 2015).

4.6 On 11 September 2015, the complainant lodged an appeal with the Federal Administrative Court against the State Secretariat for Migration decision of 3 September 2015 in which he asked for the decision to be overturned. In a ruling handed down on 22 September 2015, the Court rejected the complainant's appeal, highlighting that it concerned only the Secretariat's decision of 3 September 2015 and that, in his appeal, the complainant had not requested, even in substance, that the Secretariat's interim ruling of 11 August 2015, in which it was found that his third application for asylum had no chance of success, be overturned. In the absence of any appeal, the Secretariat's decision of 11 August 2015 then became final and, thus, the appeal proceedings concerned only the question of whether the State Secretariat for Migration had correctly established that the applicant had not paid the fees in advance as requested.

4.7 The State party argues that, in accordance with article 22 (5) (b) of the Convention, the Committee shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies,[3] and that this rule shall not apply where it has been established that the application of those remedies has been or would be unreasonably prolonged, or that it is unlikely to bring the individual effective relief. The State party should have the opportunity to examine new elements of evidence before the matter is referred to the Committee in a communication under article 22 of the Convention.[4] In keeping with the Committee's practice, the principle of exhaustion of domestic remedies also requires the complainant to have informed the competent national authorities of any new elements that occur after the definitive rejection of his application for asylum.[5]

4.8 The State party argues that, according to the Committee, the alleged illusory nature of the remedy may, in general, be overlooked if the complainant has furnished no evidence that such remedies would be unlikely to succeed.[6] In its jurisprudence, the Committee notes

[3] See *A.K. v. Switzerland* (CAT/C/36/D/248/2004/Rev.1), para. 7.2.

[4] See *A.E. v. Switzerland* (CAT/C/14/D/24/1995), para. 4.

[5] See *F.M.-M. v. Switzerland* (CAT/C/46/D/399/2009), paras. 6.3 and 6.5; *P.M.P.K. v. Sweden* (CAT/C/15/D/30/1995), para. 7; *K.K.H. v. Canada* (CAT/C/15/D/35/1995), para. 5; and *K.N. v. France* (CAT/C/23/D/93/1997), para. 6.3.

[6] See *R.K. v. Canada* (CAT/C/19/D/42/1996), para. 7.2; see also *N.D. v. France* (CAT/C/15/D/32/1995), para. 5; *D. v. France* (CAT/C/19/D/45/1996), para. 6.2; *R. v. France*

that in principle, it is not within the scope of the Committee's competence to evaluate the prospects of success of domestic remedies, but only whether they are proper remedies for the determination of the author's claims.[7] In keeping with the Committee's practice, a remedy is shown not to be proper when it has no suspensive effect[8] or when the cost of the procedure is too high.[9]

4.9 With reference to the complainant's third application for asylum, the State party argues that the State Secretariat for Migration's decision of 11 August 2015 did not prejudge the decision on the merits. Firstly, if the fees had been paid in advance, the Secretariat would have considered the application in detail and, secondly, the decision on the merits could have been appealed before the Federal Administrative Court. That fact notwithstanding, the complainant could have contested the interim ruling of 11 August 2015 together with the State Secretariat for Migration's decision to dismiss the application out of hand of 3 September 2015. However, the complainant only appealed the decision of 3 September 2015. As the case file shows, the fees payable prevented the complainant from exhausting the remedy before the Court.

4.10 The State party argues that this observation carries even more weight in the light of the outcome of the complainant's second application for asylum, in which the presiding judge (a single judge) handed down the Court's interim ruling on 19 February 2015 concerning the chances of success of the appeal and the fees payable in advance. In such a case, if the fees are paid, the judgment on the merits can be handed down by the single judge, provided that a second judge concurs (Asylum Act, art. 111 (e)). Failing such agreement, the judgment on the merits is handed down by a panel of three judges (Act of 17 June 2005 on the Federal Administrative Court, art. 21 (1), in conjunction with the Asylum Act, art. 105). The Court's interim ruling of 19 February 2015 did not prejudge the ruling on the merits. Once again, the case file does not suggest either that the advance payment of fees requested prevented the complainant from exhausting this remedy or that the remedy would have been futile.

4.11 The State party argues that the complainant has not exhausted all the domestic remedies available to him. In view of the foregoing, the State party invites the Committee against Torture to, primarily, declare the communication to be inadmissible owing to the failure to exhaust domestic remedies; or, alternatively, to set a new deadline if it nevertheless declares the communication admissible.

Comments by the complainant concerning the State party's arguments

5.1 On 7 January 2016, the complainant submitted that he did not agree with the conclusion of the State party that he had not exhausted all the domestic remedies available to him, in that he had not lodged an appeal against the interim ruling dated 11 August 2015 or requested the ruling to be overturned in his appeal against the ruling of 3 September 2015. The complainant wishes to clarify that the State Secretariat for Migration, in its decision of 11 August 2015, stated that his application for asylum had no chance of success, which is why it requested him to pay 600 Swiss francs in advance before handing down a negative decision. In accordance with article 107[10] of the Asylum Act, the interim ruling of 11 August 2015 cannot be appealed separately, as the decision on the advance payment of fees had to be appealed together with the final decision, which was only adopted on 3 September 2015.

5.2 The complainant argues that, consequently, the interim ruling concerning the futility of his application for asylum and the payment of fees in advance could only be appealed in conjunction with the final decision. On 26 August 2015, the deadline for the payment of the fees, the complainant sent a letter to the State Secretariat for Migration requesting a review

(CAT/C/19/D/52/1996), para. 7.2; *P.S. v. Canada* (CAT/C/23/D/86/1997), para. 6.3; and *L.O. v. Canada* (CAT/C/24/D/95/1997), para. 6.5.

[7] See *M.A. v. Canada* (CAT/C/14/D/22/1995), para. 4.

[8] See *Arkauz Arana v. France* (CAT/C/23/D/63/1997), para. 6.1.

[9] See *A.E. v. Switzerland*, para. 3.

[10] Article 107 of the Asylum Act is entitled: "Contestable interim rulings".

of the interim ruling concerning the futility of his third application for asylum. The Secretariat rejected his request for a review.

5.3 The complainant contested the interim ruling of 11 August 2015 by lodging an appeal with the Federal Administrative Court on 11 September 2015. He requested the suspension of the ruling of 11 August 2015, which had been negative on account of his failure to pay the fees in advance. In his appeal, the complainant firstly contested the assertion that his application for asylum had no chance of success and then highlighted the real risk that he would face persecution and inhuman treatment if he were deported to the Sudan. In the appeal that he lodged with the Court, the complainant set out all the reasons why the Swiss authorities should examine the merits of his application for asylum.

5.4 The complainant argues that, according to the Committee's jurisprudence, the State party must have the opportunity to examine all the evidence referred to in article 3 of the Convention against Torture before the complaint is considered by the Committee.[11] Consequently, the Swiss authorities must have had the opportunity to examine new and significant evidence, namely the evidence of the political activities of the complainant within JEM. The complainant indicates that he had expressed his fear of persecution on account of his membership of and activities within JEM in his third application for asylum dated 16 July 2015 and in his request for a review of the interim ruling of 11 August 2015 concerning the futility of his third application for asylum. In the appeal that he lodged with the Federal Administrative Court on 11 September 2015, the complainant highlighted the real risk of inhuman and degrading treatment and, therefore, of persecution that he would face in the Sudan. The complainant detailed his activities as a member of JEM. In that capacity, he regularly attended JEM meetings and public protests in different cities throughout Switzerland.

5.5 The complainant recalls that he had been arrested in the Sudan and persecuted as a political opponent. In view of the dangers faced by persons opposing the State in the Sudan, the complainant would run a real risk of being subjected to torture, in violation of article 3 of the Convention. He argues that his deportation to the Sudan would constitute a violation of that article.

5.6 The complainant states that he transmitted all available evidence to the State Secretariat for Migration for it to rule on his application for asylum. However, the Secretariat found his application to have no chance of success, which is why it asked him to pay 600 Swiss francs in advance.

5.7 The complainant has submitted three applications for asylum, all of which have been based on his activities within JEM. All three of his applications for asylum have been rejected. The individual appeals lodged by the complainant have also been rejected by the Federal Administrative Court. Consequently, the Swiss authorities have already ruled three times on the cruel, inhuman and degrading treatment that the complainant could face in the Sudan. The complainant notes that account must be taken of the fact that, as an unsuccessful applicant for asylum, he is not entitled to work (Asylum Act, art. 43), that his income therefore consists only of emergency financial assistance and that he receives only 5 Swiss francs per day. The complainant argues that he was not in a position to make the advance payment requested and that, consequently, he has exhausted all the domestic remedies available to him, rendering the present communication admissible.

The Committee's decision on admissibility

6.1 On 5 August 2016, at its fifty-eighth session, the Committee examined the admissibility of the complaint. In this respect the Committee has ascertained, as it is required to do under article 22, paragraph 5 (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.2 The Committee notes that the State party contests the admissibility of the complaint on the grounds of non-exhaustion of domestic remedies. The State party has asserted that if

[11] See *F.M.-M. v. Switzerland*, para. 6.5.

the complainant had paid the fee for the procedure, the judge could have ruled on his application for review but that, in the absence of such a payment, the application must be considered inadmissible. The Committee has noted the complainant's argument that he is experiencing financial hardship because he is not permitted to work and that he was consequently unable to pay the fee for the review procedure. The Committee considered that, given the complainant's personal circumstances, it was unfair to oblige him to pay the sum of 1,200 Swiss francs in order for his last application for review to be admissible. This view is based on the fact that the complainant was not authorized to work within the State party's territory and that the assistance that he receives amounts to only 5 Swiss francs per day. It therefore seemed unreasonable to deny the complainant the possibility of applying for a review of his case on financial grounds considering his difficult financial circumstances.[12] An appeal by the applicant to the Federal Administrative Court against the decision of the State Secretariat for Migration could not therefore be considered accessible in the circumstances. The Committee has therefore concluded that the argument that the complaint is inadmissible for failure to exhaust domestic remedies did not stand in the present case and that it is not precluded from considering the communication under article 22 (5) (b) of the Convention.

6.3 With reference to article 22 (4) of the Convention and rule 113 of the Committee's rules of procedure, the Committee has found no other obstacle to the admissibility of the complaint.

State party's observations on the merits

7.1 On 21 December 2016, the State party submitted observations on the merits of the communication. It explains that, in his first asylum application, the complainant had indicated that he was of Eritrean nationality, had lived in the Sudan from the age of 5 and feared persecution in Eritrea because of the political activities of his father, who had died in 1989. The Federal Administrative Court and the State Secretariat for Migration considered these assertions not credible in light of the clear contradictions and gaps in his account. The complainant used forged official documents in the procedure.

7.2 With regard to the second and third asylum applications, the State party maintains that the complainant declared himself to be of Sudanese nationality and mentioned the activities set out in his communication to the Committee. The State party explains that, even though the complainant mentioned during his hearing the detention and ill-treatment he is alleged to have suffered in the Sudan, his account was vague and general. As for the description of the political situation in the Sudan, the complainant did not manage to establish a link between it and his personal circumstances. The State Secretariat for Migration noted that the complainant was not able to specify clearly what his political activities in Switzerland were. It also noted contradictions in respect of the conditions in which he had been released.

7.3 The State party submits that the complainant does not present any new evidence in his communication to the Committee. The State party explains that the evidence presented to the Committee is essentially the same as that which the complainant submitted to the domestic authorities, with the letter from JEM-Switzerland updated and the photograph taken in Geneva replaced by another.

7.4 With regard to the human rights situation in the Sudan, the State party maintains that the country does not currently have any generalized violence, except in Darfur, where there is civil war, and Southern Kordofan and Blue Nile states, where there is armed conflict.[13] The State party notes that, as he was born in Omdurman near Khartoum, the complainant does not come from one of the regions in conflict.

7.5 The State party explains that, in its judgment *A.A. v. Switzerland*, the European Court of Human Rights noted, on the basis of various reports, that the security and human rights situation in the Sudan was alarming and had deteriorated in the months before the judgment. Nevertheless, the Court recalled that, in general, even in such situations, a

[12] See *C.M. v. Switzerland*, (CAT/C/44/D/355/2008), para. 9.2.

[13] Amnesty International, The State of the World's Human Rights 2015/16.

complainant must identify special distinguishing features in his or her case that could enable the authorities of the State party to foresee that he or she would be treated in a manner incompatible with article 3 of the European Convention on Human Rights.[14] With regard to the situation of political opponents of the Sudanese Government, the Court held that the situation was very precarious and that certain categories of the population, including members of opposition political movements, persons suspected of maintaining links with the rebel groups in Darfur, students, journalists and human rights defenders, were at particular risk in the Sudan. Furthermore, not only high-profile opponents, but anyone who opposed or was suspected of opposing the current regime was at risk of ill-treatment. According to the Court, it was acknowledged that the Sudanese Government monitored the activities of political opponents abroad.

7.6 The State party also refers to recent reports on the use of torture against political opponents in the Sudan.[15] It refers to the Amnesty International Report 2014/15 on the State of the World's Human Rights, where it is noted that "The Government continued to use the National Intelligence and Security Services and other security forces to arbitrarily detain perceived opponents of the ruling National Congress Party, to censor media and to shut down public forums and protests. The arbitrary detention of activists, human rights defenders and political opposition figures continued unabated."

7.7 However, the State party maintains that the complainant has not provided any individual elements showing that he would be in danger of being subjected to torture if he were returned to the Sudan. The State party explains that the claimant has not provided any explanation of the circumstances of his detention in the Sudan in 2005 and 2008 and has failed to produce evidence to support his allegations that he was tortured in detention. During the second asylum proceedings, the Federal Office for Migration (now the State Secretariat for Migration) and the Federal Administrative Court considered the complainant's claims in detail, noting important contradictions, and concluded that they were not credible. In addition, the State party points out that the fact that the complainant had misled the national authorities by claiming that he was a citizen of Eritrea constitutes, in the present case, an additional indication that the claims of torture, in particular, were untrue (see paragraph 7.1 above).

7.8 In respect of the complainant's political activities in the Sudan, the State party maintains that the complainant describes those activities in very general terms without substantiating them. The evidence presented by the author does not include any concrete evidence. The State party concludes that it cannot be considered that the applicant had engaged in political activities in the Sudan.

7.9 With regard to the complainant's political activities in Switzerland in JEM-Switzerland, his post as personal secretary to the President and his participation in various conferences and events, the State party maintains that his story remains vague and general. It considers that, contrary to the applicant's claim, the United Kingdom authorities did not identify the fact of being a member of JEM as, in itself, constituting a risk of treatment prohibited by article 3 of the Convention.[16] As the hearing shows, the complainant's activities are in keeping with those of an ordinary member of JEM-Switzerland and are mainly limited to the activities of an observer and photographer at meetings, including his passive participation in the 2013 meeting of Geneva Call.

7.10 The State party maintains that the complainant only criticized the Sudanese Government on Facebook, did not contribute to political programmes broadcast on the LoRa radio station, and only participated in a meeting of the Centre for Humanitarian Dialogue that was held on the premises of the radio station.

7.11 As concerns the post of personal secretary to the President of JEM-Switzerland, the State party recalls that, during the second asylum proceedings, the complainant stated that he was an ordinary member of the organization. It was only during the third asylum application that the complainant claimed to have been appointed personal secretary to the

[14] *A.A. v. Switzerland*, judgment of 7 January 2014, app. No. 58802/12, para. 40.

[15] Country Reports on Human Rights Practices 2015 — Sudan, United States Department of State.

[16] Country Information and Guidance — Sudan: "Sur place" activity in the UK (paras. 3.1.3 and 6.2.5).

President of JEM-Switzerland, a post he said he had held since September 2014. Independently of that, the complainant was detained in view of deportation from 14 July 2015 and could not carry out any political activities during that period, as he was prevented from working. Moreover, the State party considers it surprising that, according to a letter from JEM-Switzerland dated 7 September 2015, the complainant was re-elected on 14 September 2015. Attribution of the title is thus not dependent on any particular political commitment. The State party adds that the complainant attached to his second asylum request another letter of confirmation from JEM-Switzerland in which the name of the person concerned had not been updated. This adds to the impression that the letters of confirmation are standardized documents rather than genuine individual certificates.

7.12 In the State party's view, the complainant's allegation that the Sudanese authorities, which had been contacted by the Swiss authorities in order to identify the complainant and obtain an identity document, had subsequently registered him as a political activist, is unfounded. He refers to a report in which the United Kingdom Home Office noted that the fact of having applied for asylum abroad was not in and of itself an element of risk.[17]

7.13 The State party maintains that the Sudanese authorities are able to distinguish between the many Sudanese nationals involved in protests in Europe in order to obtain a residence permit and the real political activists opposed to the regime, who could pose a threat to it and had already attracted the attention of the Sudanese authorities before their departure from the Sudan.

7.14 The State party explains that the complainant's situation is clearly different from that in the judgment of the European Court of Human Rights in the case of *A.A. v. Switzerland*, which describes a much more public political profile that grew in importance over the years. Firstly, the political activities on which that judgment was based differed significantly from those of the complainant, especially with regard to their scope and duration, as well as the resulting degree of exposure for the persons concerned in respect of the Sudanese authorities. Secondly, the European Court judgment refers to a particular case, which cannot serve as a judgment of principle in deciding on the individual danger faced by all Sudanese persons politically active in Switzerland. The State party indicates that its national authorities took account of the judgment and of the risk profiles referred to in their decisions but noted that the complainant did not have a risk profile.

7.15 The State party concludes that the complainant does not have a particular political profile that would make him likely to be a target for persecution by the Sudanese authorities.

7.16 The State party explains that, in considering the complainant's claims made during the second and third asylum applications, the State Secretariat for Migration and the Federal Administrative Court also took account of the complainant's behaviour and the statements he made during the first asylum procedure. In its interim ruling of 19 February 2015, the Court emphasized that the complainant had failed to explain why he had purported to have a false nationality and used false documents during the first asylum procedure. It was surprising that, before the Committee, the complainant did not make any reference to those incidents during the first asylum procedure or to the Court's interim ruling of 19 February 2015.

7.17 The State party maintains that it agrees with the Court's assessment that persons at risk of persecution have no interest in using the methods used by the complainant, since the use of false identities can mislead the asylum authorities, which may therefore take decisions that endanger the life and health of a person in need of protection. The Court also noted that the documents submitted in support of his second asylum application included a JEM-Switzerland membership card and confirmation from JEM-Switzerland, but that the membership card was in the name of a different person ("Aref Abdullaha") to that mentioned in the confirmation ("Abdalla Aare"). To date, the complainant has not explained this inconsistency.

[17] Country Information and Guidance — Sudan: Failed Asylum Seekers, Home Office, United Kingdom, August 2016, (para. 3.1.2).

7.18 Regarding the copies of the birth certificate and the driver's licence submitted by the complainant, the State party submits that they do not make it possible to establish the identity of the complainant or any risk of persecution in the case of his return.

7.19 The State party observes that the complainant does not argue that procedural errors have occurred. It is a case which has already been the subject of a comprehensive legal review by the national authorities that are specialized in this field. The State party refers to the Committee's jurisprudence that "it is within the purview of the courts of the States parties to the Convention to assess the facts and evidence in a case", and that the Committee should examine facts and evidence only if it can be established that "the evidence was assessed in a patently arbitrary manner or one that amounted to a miscarriage of justice".[18] The State party argues that the submissions of the complainant do not show that its consideration of the matter has been flawed by any such irregularities.

7.20 The State party adds that the allegations and the evidence provided do not support the conclusion that deporting the complainant would expose him to a real, specific and personal risk of being subjected to torture. It invites the Committee to find that the complainant's return to the Sudan would not constitute a violation of the State party's international obligations under article 3 of the Convention.

Comments by the complainant concerning the State party's arguments

8.1 The complainant maintains that, although he has not been able to provide evidence of having been detained in 2005 and 2008, it cannot be concluded that his allegations are not credible. He notes that he gave details of the detentions during the hearing of 26 September 2014 at the State Secretariat for Migration. With regard to his detention in 2005, he told the Swiss authorities that he had been forced into a car by security officers who had blindfolded and handcuffed him as he was leaving a lecture at the university. He was tortured and questioned for three days. The second time he was detained, security officers and students of the National Congress Party came to look for him at his home. They held him for 21 days and again tortured him brutally. The complainant explained that they broke his arm, leg and foot. After 21 days, the complainant was released and left in a cement container.

8.2 The complainant adds that he gave a detailed account of his political activities in the Sudan. He spoke about the activities of the group and the fact that he had been required to make a speech expressing solidarity with a colleague whose mother had been killed following a bombing in the village of Attina in Darfur. He explained that many students had gathered for a demonstration when he made the speech. He recounted in detail how donations were collected and how he had got to know about JEM. He also informed the Swiss authorities that he had found out from his colleagues' photographs what had really happened in Darfur. He demonstrated clearly that he was a member of JEM at university and had been actively involved in the organization. The complainant also submits that the letter from S.A. was not intended to give a detailed explanation of the complainant's actual activities in the Sudan. He adds that he did not provide further details because the questions asked by the State party's authorities were themselves very general.

8.3 Regarding his activities in Switzerland, the complainant recalls the decision of the European Court of Human Rights in the case of *A.A. v. Switzerland* that the situation of political opponents of the Sudanese Government was very precarious and that not only high-profile opponents, but anyone who opposed or was suspected of opposing the current regime was at risk of ill-treatment. That position was confirmed in the Court's decision on *A.F. v. France*.[19]

8.4 The complainant recalls that he is the personal secretary to the President of the Swiss branch of JEM. During the hearing of 26 September 2014, he described his work in detail: in 2013, he had participated in a meeting of Geneva Call attended by high-profile opponents. He had helped to prepare the President's address for that event and had given

[18] See *Kuti v. Morocco* (CAT/C/46/D/419/2010), para 8.7; and *J.A.M.O. v. Canada* (CAT/C/40/D/293/2006), para. 10.5.

[19] *A.F. v. France*, No. 80086/13, judgment of 15 January 2015.

participants the contact details of persons still in the Sudan who could provide information on the events taking place there. He also participated regularly in conferences of JEM that were often attended by a large number of high-profile opponents. The complainant maintains that his activities for the group were of a regularity and frequency comparable to those of the person concerned in the *A.A. v. Switzerland* case.

8.5 The complainant maintains that, according to a decision of the Federal Administrative Court of 31 May 2013, [20] persons who speak critically against the Government or the authorities or about the situation in Darfur or who are suspected of supporting opposition groups are regularly monitored by the Sudanese authorities, including by the intelligence and security service. The role of the complainant within JEM is comparable to the activities described in that judgment and makes him likely to be monitored by the Sudanese Government. The complainant stresses that he was not merely seeking to acquire a political profile in order to obtain a residence permit, but that his commitment is genuine and real.

8.6 The complainant adds that, in the same decision, the Federal Administrative Court maintains that Sudanese nationals who return to the Sudan after an absence of several years should expect to be questioned by the Sudanese security authorities. Persons who have been in contact with an opposition group in Geneva and take a public stance against the Sudanese regime are systematically registered by the Sudanese authorities. Such persons are also systematically arrested once they return to their country of origin. In this regard, the complainant contends that he has participated in numerous political events of JEM, many of which have been documented by photographs. He adds that he has been publicly linked with JEM and thus has certainly been registered by the Sudanese authorities. Moreover, he has been in Switzerland for almost seven years, and so must in any case expect to be questioned if he were to return to his country. Furthermore, the Sudanese authorities had already registered him as a member of the opposition when he was detained in the Sudan.

8.7 The complainant concludes that, in the light of the jurisprudence of the Federal Administrative Court and the European Court of Human Rights, his activities and role are sufficient to attract the attention of the Sudanese authorities and that, if he were to return there, he would be arrested and subjected to treatment contrary to article 3 of the Convention.

8.8 He also refers to the fact that the Court emphasized in its interim decision of 19 February 2015 that the complainant had failed to explain why he had claimed to have a false nationality and used false documents in the first proceedings. The complainant explains that he did so because of his political activity in the Sudan. He was afraid of being persecuted by the Sudanese authorities outside the Sudan as they know his real name. He also submits that he felt a terrifying fear and believed he would be protected if he said he was Eritrean. He was poorly advised by a trafficker who said that he was more likely to be accepted as a refugee in Europe if he claimed to be Eritrean. The complainant indicates that, at the time, he was not familiar with the refugee system and asylum practices in Europe and so he trusted the trafficker who was supposed to know more about the subject. The complainant is now aware that his behaviour was unacceptable and would like once again to apologize to the Swiss authorities for having made false statements.

8.9 In respect of the State party's argument that there were inconsistencies concerning his name in the evidence produced during the second asylum proceedings, the complainant explains that, at the hearing of 26 September 2014, he had already admitted to having given a false name during the first proceedings. He maintains that his true name is Aare Abdelkrim Abdalla Mohammed, which is the name on the JEM-Switzerland membership card. The names are the same, but had been spelled differently.

8.10 The complainant concludes that the State party would be violating his rights under article 3 of the Convention if it were to deport him to the Sudan.

[20] Federal Administrative Court, judgment E-1979/2008, para. 10.5.

Additional submission by the complainant

9.1 On 19 October 2017, the complainant submitted to the Committee the copy of a letter from Gibril Ibrahim Mohamed, the President of JEM, dated 11 October 2017. This letter, which was addressed to the immigration services of the State party, confirms that the claimant has been a member of the executive body of JEM-Switzerland and of the organization since 2008. It adds that the complainant's life would be in danger if he returned to the Sudan and recalls that JEM is identified as the main opponent of Omar Al Bashir's regime. It calls on the State party's authorities to respond positively to the complainant's application for asylum.

9.2 The complainant also refers to a report of the United Kingdom Home Office and the Danish Immigration Service on the situation of persons from Darfur, Southern Kordofan and Blue Nile in Khartoum, according to which those returning from abroad with a political profile may be questioned extensively and/or detained at the airport. According to the complainant, this statement demonstrates that Sudanese nationals returning from abroad, particularly JEM members, are strictly monitored and immediately detained and questioned at the airport upon their return.[21]

Issues and proceedings before the Committee

Consideration on the merits

10.1 In accordance with article 22 (4) of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

10.2 The issue before the Committee is whether the removal of the complainant to the Sudan would constitute a violation of the State party's obligation under article 3 of the Convention not to expel or to return a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3 (2) of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the Committee recalls that the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he or she would return. The existence of a pattern of gross, flagrant or mass violations of human rights in a country therefore does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country, and additional grounds must be adduced to show that the individual concerned would be personally at risk. Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.[22]

10.3 The Committee recalls its general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22, according to which the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. While the risk does not have to meet the test of being highly probable,[23] the Committee recalls that the burden of proof generally falls on the complainant, who must present an arguable case that he or she faces a "foreseeable, real and personal" risk.[24] The Committee further recalls that, in accordance with its general comment No. 1, it gives considerable weight to findings of fact that are made by the organs of the State party concerned, while at the same time it is not bound by such findings and instead has the power, under article 22 (4) of the

[21] Sudan: Situation of Persons from Darfur, Southern Kordofan and Blue Nile in Khartoum, the United Kingdom Home Office and the Danish Immigration Service, August 2016.

[22] See *S.P.A. v. Canada* (CAT/C/37/D/282/2005); *T.I. v. Canada* (CAT/C/45/D/333/2007); and *A.M.A. v. Switzerland* (CAT/C/45/D/344/2008).

[23] See footnote 11.

[24] Ibid. See also *A.R. v. The Netherlands* (CAT/C/31/D/203/2002), para. 7.3.

Convention, of free assessment of the facts based upon the full set of circumstances in every case.[25]

10.4 The Committee notes that the complainant claims that he became an active member of JEM while he was studying at university in the Sudan; that in 2005 he was detained and tortured for three days by the Government of the Sudan; and that he was arrested again at his home in 2008 and detained for three weeks by the authorities, who asked him to provide information on JEM.

10.5 In that regard, the Committee notes that the State party considers that the author has not provided any explanation of the circumstances of his detention in the Sudan in 2005 and 2008 and has failed to produce any evidence to support his allegations that he was tortured in detention. While the Committee notes the complainant's argument that he had submitted to the State Secretariat for Migration sufficient details of his detention in 2005 and 2008 and his political activities in the Sudan, the Committee observes that the State party's authorities considered these statements to be vague, general and undermined by major inconsistencies. The Committee notes that, as a result, the State party's authorities concluded that the statements were not credible.

10.6 It also notes that the State party's authorities emphasized that the author had not provided any explanation of why he had lied about his citizenship during his first asylum procedure. In this connection, the Committee notes the complainant's explanations that he gave a false nationality during his first asylum application for fear of persecution by the Sudanese authorities on account of his political activities prior to his departure from the Sudan, and that he had been poorly advised by a trafficker who said that he would be more likely to be recognized as a refugee in the State party if he said he was Eritrean. However, the Committee notes that the State party considers that the fact that the complainant misled the national authorities is an additional indication that undermines the credibility of his claims of torture.

10.7 With regard to the complainant's political activities in Switzerland, the Committee notes the complainant's arguments that, since his arrival in the State party, he had continued his political activities for JEM, participating in conferences and meetings of the Sudanese opposition, including a meeting organized by Geneva Call, and that he had been appointed personal secretary to the President of JEM-Switzerland on account of his activism. It also notes that the complainant was photographed during these events together with members of JEM.

10.8 The Committee also notes that the State party's authorities considered the complainant's accounts of his political activities in Switzerland to be vague, general and in keeping with those of an ordinary member of JEM-Switzerland, being mainly limited to the activities of an observer and photographer at meetings, including his passive participation in the 2013 meeting of Geneva Call. The Committee notes that the State party considers that, based on his political activities in Switzerland and his low political profile, there is insufficient evidence to conclude that he is at risk of suffering treatment that would violate the Convention if he were to be returned to the Sudan. According to the State party, the complainant's activities are in keeping with those of an ordinary member of JEM-Switzerland and his situation is clearly different from that in the judgment of the European Court of Human Rights in the case of *A.A. v. Switzerland*, which describes a much more public political profile that grew in importance over the years. The Committee notes the State party's explanations to the effect that its national authorities took account of that judgment and the risk profiles referred to in previous decisions but concluded that the complainant does not have a particular political profile that would make him likely to be a target for persecution by the Sudanese authorities.

10.9 In that regard, the Committee considers that the complainant has failed to demonstrate convincingly that his political activities would attract the interest of the Sudanese authorities or that the authorities in his home country are looking for him and that he would face a personal risk of being tortured if returned to the Sudan. The Committee notes that Gibril Ibrahim Mohamed's letter of 11 October 2017 was submitted by the

[25] See, inter alia, *Alp v. Denmark* (CAT/C/52/D/466/2011), para. 8.3.

complainant to the State party's authorities after his third application for asylum had been rejected and that they were unable to take this information into account. As to the complainant's allegation that he would be detained and questioned upon return because he had spent a long time abroad and applied for asylum, the Committee recalls that the mere risk of being detained and questioned is not sufficient to conclude that there is also a risk of being subjected to torture.[26]

10.10 Lastly, the Committee notes the general human rights situation in the Sudan, particularly reports confirming the use of arbitrary detention and torture against protesters and returnees and reports of individuals accused of providing information to JEM being subjected to torture.[27] However, the Committee recalls that the occurrence of human rights violations in the complainant's country of origin is not, of itself, sufficient for it to conclude that a complainant is at a foreseeable, real and personal risk of being tortured in the country to which he or she is returned. In the light of the above, the Committee considers that the information submitted by the complainant is insufficient to establish his claim that he would be at a foreseeable, real and personal risk of torture if he were returned to the Sudan.[28]

11. In the light of the above, the Committee, acting under article 22 (7) of the Convention, concludes that the decision of the State party to remove the complainant to the Sudan would not constitute a violation of article 3 of the Convention.

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[26] See, for example, *P.Q.L. v. Canada* (CAT/C/19/D/57/1996), para. 10.5.

[27] See Human Rights Watch, World Report 2017 — Sudan, available at: http://www.refworld.org/docid/587b581ba.html; Human Rights Watch, Make Their Lives Miserable, 9 September 2014, available at: www.hrw.org/report/2014/09/09/make-their-lives-miserable/israels-coercion-eritrean-and-sudanese-asylum-seekers; Sudanese refugees forcibly deported from Jordan fear arrest and torture, available at www.theguardian.com/world/2016/jan/19/sudanese-refugees-forcibly-deported-from-jordan-fear-arrest-and-torture; and Sudan 2015 Human Rights Report, United States Department of State, available at: https://www.state.gov/documents/organization/252945.pdf.

[28] See, for example, *S.A. v. Sweden* (CAT/C/32/D/243/2004), para. 4.2; and *W.G.D. v. Canada* (CAT/C/53/D/520/2012), para. 8.7.